

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANNA W. WALL,)	
)	No. CV-07-076-CI
Plaintiff,)	
)	ORDER GRANTING, IN PART,
SPOKANE COUNTY, WASHINGTON,)	DEFENDANTS' MOTION FOR
<i>et al.</i> ,)	DISMISSAL OF ALL STATE
)	CLAIMS
Defendants.)	

Before the court is Defendants' Motion for Partial Summary Judgment pursuant to FED. R. CIV. P. 56 and dismissal of all aspects of the case except the claim under 42 U.S.C. § 1983. (Ct. Rec. 17.) Defendants are represented by James H. Kaufman, Spokane County Senior Deputy Prosecutor. Plaintiff is represented by attorney Richard D. Wall. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 12.)

Plaintiff filed a Complaint on March 13, 2007, alleging civil rights violations and claims under state law. (Ct. Rec. 1.) Defendants argue that this court does not have jurisdiction over pendent state claims because Plaintiff filed her lawsuit in federal court prior to the expiration of the sixty-day waiting period required by state law governing tort claims against local

1 governmental entities.¹

2 Citing *Troxell v. Rainier Public School Dist. No. 307*, 154
3 Wn.2d 345 (2005), Defendants ask the court to dismiss all pendent
4 state claims with prejudice. (Ct. Rec. 17 at 6.) In *Troxell*, the
5 Washington Supreme Court affirmed the trial court's dismissal *with*
6 *prejudice* of plaintiff's tort claims because she commenced her tort
7 action before the required sixty-day period had expired, as required
8 by RCW 4.96.020(4). In *Troxell*, however, the three-year statute of
9 limitations had run on the plaintiff's tort claim. *Id.* at 349.

10 Plaintiff concedes that this court lacks jurisdiction over her
11 state law claims because the sixty-day period had not run prior to
12 her filing the lawsuit in this court; she does not object to
13 dismissal of her state law claims, but contests Defendants'
14 assertion that the state claims should be dismissed with prejudice.
15 (Ct. Re. 24 at 1.) Plaintiff does not concede, and Defendants do
16 not allege, that the statute of limitations has run on the
17 Plaintiff's state law claims. Defendants do not allege prejudice if
18 Plaintiff's state law claims are dismissed without prejudice, and
19 offer no authority for the proposition that the state claims should
20 be dismissed with prejudice before the federal claim has been
21 decided. Accordingly, Plaintiff's state law claims are dismissed
22 without prejudice. See, e.g., *United States v. Webb*, 655 F.2d 922,
23

24 ¹ RCW 4.96.020 (4):

25 No action shall be commenced against any local
26 governmental entity . . . for damages arising out of
27 tortuous conduct until sixty days have elapsed after the
28 claim has first been presented to and filed with the
governing body thereof. The applicable period of time
limitations within which an action must be commenced shall
be tolled during the sixty-day period.

1 980 (9th Cir. 1981); *James v. Pliler*, 269 F.3d 1124 (9th Cir. 2001).
2 Accordingly,

3 **IT IS ORDERED:**

4 1. Defendants' Motion (**Ct. Rec. 17**) is **GRANTED IN PART**;

5 2. Plaintiff's state law claims are dismissed without
6 prejudice;

7 3. Plaintiff's claim under 42 U.S.C. § 1983 shall proceed
8 consistent with the dates in the court's scheduling order entered on
9 August 24, 2007. (Ct. Rec. 16.)

10 The District Court Executive is directed to enter this Order
11 and furnish copies to counsel for Plaintiff and Defendants.

12 DATED November 14, 2007.

13
14 S/ CYNTHIA IMBROGNO
15 UNITED STATES MAGISTRATE JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28